

No. 83-1282

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1983

MATTHEW SHUTTLEWORTH and
DEBORAH SHUTTLEWORTH,
Petitioners,

VS.

CATHOLIC FAMILY SERVICES, and
LICENSED FOSTER PARENTS,
Respondents.

REPLY BRIEF ADDRESSED TO
ARGUMENTS FIRST RAISED IN THE BRIEF
IN OPPOSITION

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ARGUMENT

Respondent argues "waiver" and attaches as Exhibit C to its Brief in Opposition a document dated three (3) days after termination of Matthew Shuttleworth's parental rights, and never filed with the Family Court. (See generally, Exhibit C to Respondent's Brief and Exhibit D to the Petition filed with this Court.) Appendix A to our Petition for Certiorari shows the following finding of fact by the Alabama Court of Civil Appeals:

We recognize that the waiver was apparently signed after the hearing and judgment and was not filed in the court.

-- Petition for Certiorari
Appendix A, p. 14-18
(Emphasis supplied)

and the following additional findings regarding that document by the Alabama Supreme Court are also attached:

By her statement, Ms. Dinwitty admits that she saw Matthew for the first time on May 21, 1980, almost two months after his parental rights were terminated. She said that she made the representation to the court concerning agreement of the father because the mother had said on one occasion that he would agree, although on other occasions she had said he would not agree. Deborah testified in court that Ms. Dinwitty told her she had twelve months after the court hearing to make up her mind as to whether or not the surrender of her child would be permanent. Ms. Dinwitty denies making such a representation. She does not deny that she attempted to notarize a consent paper purportedly signed by Matthew Alen Shuttleworth, although she had not seen him sign it. Her jurat on this particular paper was cancelled almost immediately by her, after considering the impropriety of making such a certification.

-- Petition for Certiorari
Appendix B, p. B-7
(Emphasis supplied)

In this case, the Catholic Social Services Agency of Huntsville, through the actions of Ms. Dinwitty, must share much of the responsibility for the emotional trauma suffered by both the natural and the proposed

adoptive parents. The carelessness with which rights so precious as these appear to have been handled is inexplicable.

-- Petition for Certiorari
Appendix B, p. B-7
(Emphasis Supplied)

Ms. Dinwitty admitted that if she had handled the custody proceedings in Madison County, Alabama, she would have written the father and had direct communication from him before final hearing in Family Court. The proceedings were held in Jefferson County at the request of Deborah in order to protect the secrecy of her giving birth to an illegitimate child. In furtherance of the same purpose, the child was born in Tennessee. Similarly, Matthew says he signed the consent because he was told by Deborah that it was necessary to protect the secrecy of the birth, but not to surrender his parental rights.

-- Petition for Certiorari
Appendix B, p. B-8
(Emphasis supplied)

As this Court noted in Lehr v. Robertson,
____ U.S.____, 103 S.Ct. 2985, 77 L.Ed.2d
614 (1983), where an unwed father demon-
strates a full commitment to the respon-

sibilities of parenthood by coming forward to participate in the rearing of his child and thereby creating an interest in personal contact with his child, he is entitled to substantial protection under the due process clause. 103 S.Ct., at 2993. Three months after the birth of his only child, Matthew Shuttleworth's parental rights were terminated without notice after an Alabama Supreme Court "full commitment" and "coming forward" finding, as follows:

Matthew never denied paternity of the child and has relentlessly objected to adoption and objected to abortion. Deborah admits he is the father of the child. From the first time he learned that Deborah was pregnant, he wanted to marry her and become the legal father of the child.

-- Petition for Certiorari
Appendix B, p. B-3
(Emphasis supplied)

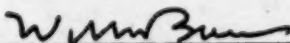
It was Matthew Shuttleworth who introduced the document which appears as Exhibit C to Respondent's Brief in Opposition into the record. The purpose for his doing so was to show the impropriety of the social worker's acts, and to show that she should have obtained a knowing, intelligent and properly executed waiver before attempting to induce the Family Court to terminate his parental rights. Her failure to ever file the sham document which appears as Exhibit C with the Family Court speaks for itself.

CONCLUSION

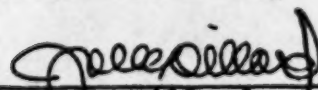
The arguments in Respondent's Brief in Opposition regarding Petitioners' reasons 2, 3 and 4 for granting the writ do not require a reply. This brief is filed as to Reason 1 to prevent any con-

fusion which might otherwise arise regarding the sham "waiver" attached as Exhibit C to the Brief in Opposition.

Respectfully submitted,
BAXLEY, BECK, DILLARD & DAUPHIN



William J. Baxley



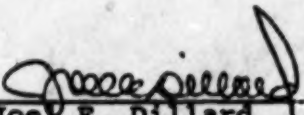
Joel E. Dillard

CERTIFICATE OF SERVICE

I, Joel E. Dillard, counsel for the Petitioners, Matthew and Deborah Shuttleworth, pursuant to Rule 28.5 of the Rules of the United States Supreme Court, hereby certify that I have this day served three copies of the foregoing Brief for the Petitioners upon the following parties who are all the parties required to be served with the same: Honorable Jim

Beech, Tweedy, Jackson & Beech, First
National Bank Building, Jasper, Alabama,
35501, Attorney for Anonymous Foster/
Adoptive Parents; and Honorable Michael
E. Brodowski, 2304 Memorial Parkway
South, Huntsville, Alabama, 35801, At-
torney for Catholic Family Services, by
mailing said copies to them by depositing
the same in the United States Post Office
with first class, priority, postage
prepaid.

Done this the 10th day of April, 1984.



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